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FILED
DEC 26
CHARLES ELMORE

IN THE

Supreme Court of the United States

HARTFORD ACCIDENT & INDEMNITY COMPANY,

Appellant,

vs.

O. L. BUNN, doing business as BUNN ELECTRIC COMPANY, et al.,

Appellees

No. 333

OCTOBER TERM, 1931

BRIEF ON BEHALF OF APPELLANT IN REPLY TO MOTION OF NATCHEZ INVESTMENT COMPANY TO DISMISS

W. CALVIN WELLS,
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SUBJECT INDEX AND TABLE OF CASES

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The alleged non-federal question, being subordinate to and dependent on the constitutionality of the statute, its presence in the record, does not defeat jurisdiction..... 1

CASES CITED

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(N. B. The Court, by order, having hitherto postponed consideration of jurisdictional questions, till argument on the merits, counsel have briefed these questions in their brief on the merits. So far as these questions are involved in these motions to dismiss or affirm, arguments and citations are not repeated in present briefs; it being assumed that the Justices will have before them the briefs on the merits in considering these motions.)

BRIEF.

After counsel for appellants had printed and sent for filing their brief on the merits and their brief on the motion of appellees to dismiss, they were served with another motion to dismiss by Natchez Investment Company, for the use of Engle and Laub, to whom counsel fees were awarded. Hence, this additional brief.

Even if it were conceded that the allowance of the attorneys' fees is not involved in the federal question, still this would be no ground for dismissal. The jurisdiction of the Supreme Court to review the final decree of the highest court of the State of Mississippi having attached because in the suit in which that decree was rendered there was drawn in question the validity of a statute of that State, on the ground of its being repugnant to the Constitution of the United States, it has, under Judicial Code § 127, U. S. C. § 344, the power to reverse, modify or

affirm the decree or to remand the cause for further proceedings consistent with the opinion of the Supreme Court.

Missouri Pacific R. Co. v. Larabee, 234 U. S. 459; 58 L. ed. 1398.

In other words, where the non-federal question is not broad enough to constitute a basis for the entire decree, the court has jurisdiction.

Where a non-federal question or a question of fact is so interwoven with the federal question as that the latter cannot be decided fully without a consideration of the former, the Court will consider both.

Cedar Rapids Gas Light Co. v. Cedar Rapids, 223 U. S. 655; 56 L. ed. 595.

Abie State Bank v. Bryan, 282 U. S. 765; 75 L. ed. 690.

The liability for, and the amount of the attorneys' fees in this case necessarily depended on the liability of the appellant to the materialmen; and that liability was absolutely dependent on the constitutionality of the attacked statute.

The liability under the contract, to which counsel refer (R. 17) for attorneys' fees for filing the bill, arose only in the event it became *necessary* to institute "concursus proceedings"; and, in the nature of things, such a proceeding could not become necessary unless the bond ran in favor of the materialmen.

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